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10/075,088	02/16/2002	Graham Lindley Spruiell	IMA-0014-OXYPAK	7112

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT PAPER NUMBER

3731

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/075,088

Applicant(s)

SPRUIELL, GRAHAM LINDLEY

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-5, 7-17, 19, 21, 22 and 26-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19, 21, 22 and 37-40 is/are allowed.
- 6) ☒ Claim(s) 2-5, 7-17 and 26-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Arguments***

1. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. The Applicant has amended the claims changing the scope of the claims and required a new search and a new grounds of rejection.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4, 7, 9, 11, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol et al. 6063407 in view of Kirchgeorg et al. 6327497.

4. As to claim 7, Zapol et al. teaches an emergency medical kit comprising a portable oxygen tank (col. 6, lines 43-46); a facemask; and a medication comprising a nitrate (col. 1, lines 60-63). It should be noted that Zapol et al fails to specifically teach the portable oxygen tank containing oxygen at a pressure ranging from 250 to 5000 PSI, wherein the portable tank is configured to weigh less than 5 pounds when filled with oxygen; a pressure regulating valve attached to the oxygen tank and delivering the oxygen therefrom at a pressure ranging from 20-50 PSI, and at a flow rate ranging from 20 cubic centimeters to 60 liters per minute; a hollow delivery tube; or a portable container.

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5. Kirchgeorg et al. teaches an emergency medical kit with a common oxygen delivery system. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed limitations for portability. Furthermore, it is well known in the art for an oxygen storage tank to have a regulator for controlling the amount of pressurized gas released from the container. And furthermore, it should be noted that Zapol/Kirchgeorg fails to teach wherein the portable oxygen tank is less than 5.0 pounds or less. However, it would have been obvious to one of ordinary skill in the art to make the oxygen tank as lightweight as possible, including the claimed limitations, to make the system as light weight/portable as possible.

6. As to claim 4, 9, 11, and 31 Zapol/Kirchgeorg teaches an emergency medical kit as in claim 7, and wherein the medication comprises one of clopidogrel, heparin, and a glycoprotein IIb/IIIa inhibitor (col. 2, lines 32-37, col. 8, lines 25-37); wherein the medication further comprises one of acetylsalicylic acid and dipyridamole (col. 8, lines 17-22).

7. Claims 2, 3, 5, 8, 10, 12, 13, 16, 26-29, 33, 34, 35- 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol/Kirchgeorg as applied to claims above, and further in view of Stanley et al. 5484602.

8. As to claims 8 and 10, Zapol/Kirchgeorg teaches the emergency medical kit of claim 7. It should be noted that Zapol/Kirchgeorg fails to teach wherein the nitrate comprises nitroglycerin.

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9. Stanley et al. teaches the use of nitroglycerin as a cardiovascular drug.

Therefore it would have been obvious to use nitroglycerin as an obvious alternative to using gaseous nitrate because they would have the same effect.

10. As to claim 2, 3, 5, 12, 13, 16, 26-29, and 33- 36, Zapol/Kirchgeorg/Stamley teaches an emergency medical kit as in claims 7 and 9, and wherein the medication comprises a Beta-Blocker (col. 1, lines 46-56, Stanley); wherein the Beta-Blocker is selected from the group of propranolol (col. 20, lines 19-21), metoprolol and atenolol (col. 14, lines 1-54); wherein the medication further comprises a calcium channel blocker (col. 1, line 46-56); wherein the medication comprises an ACE inhibitor (col. 26, lines 21-43); wherein the calcium channel blocker is selected from the group of nifedipine, diltiazem, verapamil, and amlodipine (col. 14, lines 1-54); wherein the nitrate comprises isosorbide (col. 22, lines 11-15); wherein the isosorbide comprises one of isosorbide dinitrate (col. 11, lines 29-30) in an oral dosage of at least 10 mg (col. 14, lines 25-54), and isosorbide monitrate in an oral dosage of at least 20 mg

11. Claims 14, 15 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol/Kirchgeorg as applied to claims above, and further in view of Duhaylongsod 6141589.

12. As to claim 14, Zapol/Kirchgeorg teaches an emergency medical kit as in claim 7 and 9. It should be noted that Zapol/Kirchgeorg fails to teach wherein the medication comprises magnesium.

13. Duhaylongsod teaches the use of magnesium for controlling the heart (col. 5, lines 27-32). Therefore it would have been obvious to one of ordinary skill in the art to

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include the magnesium of Duhaylongsod for precise pacing and control of cardiac contractions during heart attacks.

14. As to claims 15 and 32, Zapol/Kirchgeorg/Duhaylongsod teaches the emergency medical kit of claim 14 wherein the medication further comprises one of aspirin, clopidogrel, heparin, dipyridamole and a glycoprotein IIb/IIIa inhibitor (col. 8, lines 17-22, col. 8, lines 25-37); wherein the medication further comprises a nitrate comprising one of isosorbide and nitroglycerin (col. 2, lines 32-47).

15. Claims 17 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol/Kirchgeorg/Stanley as applied to claims above, and further in view of Duhaylongsod.

16. As to claim 17 and 30, Zapol/Kirchgeorg/Stanley teaches an emergency medical kit as in claims 7, 9, and 13. It should be noted that Zapol/Kirchgeorg/Stanley fails to teach wherein the medication comprises magnesium.

17. Duhaylongsod teaches the use of magnesium for controlling the heart (col. 5, lines 27-32). Therefor it would have been obvious to one of ordinary skill in the art to include the magnesium of Duhaylongsod for precise pacing and control of cardiac contractions during heart attacks.

***Allowable Subject Matter***

18. Claims 19, 21, 22 and 37-40 are allowable over the prior art of record.

19. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or render obvious the overall claimed method for increasing a patient's chance to survive a sudden ischemic event without

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suffering permanent tissue damage comprising the steps of: providing a patient with a portable emergency medical kit comprising a prescribed medication in a dosage amount identified and in a form suitable for self administration a probable oxygen tank, pressure regulation valve, hollow delivery tube and a facemask configured to deliver breathable oxygen to the patient at an appropriate pressure and flow rate during the sudden ischemic event; informing the patient of what symptoms to look for and instructing the patient in the use of the breathable oxygen and the medication in the event that the sudden ischemic event occurs; and instructing the patient to keep the emergency medical kit readily available for use.

### ***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MM

  
GLENN K. DAWSON  
PRIMARY EXAMINER